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OFFICE OF PETITIONS

In re Application of :
Zoller, et al. :
Filed: December 3, 2003 : ON PETITION
Application No. 10/725,418 :
Atty. Dkt. No.: 100337.54074D9 :

This decision is in response to the "Petition," filed October 12, 2004, requesting that the above-identified application be accorded a filing date of December 3, 2003.

The petition is hereby GRANTED.

The above-identified application was filed December 3, 2003. The Notice to File Missing Parts of Nonprovisional Application ("Notice") mailed August 10, 2004 indicated, *inter alia*, that Figure 10B as described in the application appeared to have been omitted from the application as filed.

The Notice permits applicant to either: (1) establish prior receipt in the PTO of page 7 of the specification; (2) submit the omitted page of specification and accept the date of such submission as the application filing date. An assertion that the missing page of specification was in fact deposited in the PTO with the application papers must be made by way of petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted item with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such item and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)); or (3) take no action thereby constructively accepting the application filed as in the USPTO without the omitted item. Failure to take any action requires amendment of the specification to cancel reference to the omitted item.

Petitioners contend that Figure 10 submitted with the application contains 12 panels identified as panels 10A through 10L. Petitioners further contend that the reference to Figure 10B in the application should have instead referred to Panel B on Figure 10.

Petitioners are arguing that no drawings were actually omitted from the application as filed but instead the specification misidentified the figure in question.

A review of the original sheets of drawings filed confirms that the drawings included a sheet labeled Figure 10. Said figure includes 12 panels. Since it is obvious from the petition that no drawings were actually missing on December 3, 2003, and that applicants do not intend to file any additional sheets of drawings, the application will be processed using the drawings filed on December 3, 2003.

However, the Notice was correct in advising applicant that Figures 10B appeared to have been omitted. Therefore, the Notice was properly mailed and will not be withdrawn.

The petition fee will not be refunded, since the petition was not necessary to correct any PTO error.

Petitioners are advised to submit a preliminary amendment to the specification clarifying the references to Figure 10 and the panels depicted thereon prior to the issuance of the first Office action on the merits.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of December 3, 2003, using the 15 sheets of drawings filed on that date.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.



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